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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,187	12/31/2001	Feng Yu	075635.0108	7183
7590 Baker Botts L.L.P. Suite 600 2001 Ross Avenue Dallas, TX 75201-2980			EXAMINER  PRENDERGAST, ROBERTA D	
			ART UNIT  2628	PAPER NUMBER
			MAIL DATE  11/07/2008	DELIVERY MODE  PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/039,187

**Applicant(s)**

YU ET AL.

**Examiner**

ROBERTA PRENDERGAST

**Art Unit**

2628

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-24.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Ulka Chauhan/  
Supervisory Patent Examiner, Art Unit 2628

Continuation of 3. NOTE: New claims 25-29 depend from claim 24 and claims 35-40 are apparatus claims for an apparatus that is capable of performing the method of claims 24-29 and thus claims 25-29 and 35-40 require further search and consideration. New claims 30-34 and 41-46 contain new matter, i.e. P is greater than one (the specification as originally filed discloses only where P is greater than zero, see page 4, lines 8-9 and page 18, lines 24-26, P can be one).

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant first argues, with respect to previously presented claim 24, that "The Office Action on page 11 seemingly asserts that an alleged "N x M lofted surface" in Maya constitutes the claimed "first surface" and that the side extension added adjacent to the lofted surface constitutes the claimed "second surface," but this is incorrect. The cited portion of Maya fails to disclose converting anything that can be considered a P x 1 surface condition of the lofted surface. Indeed, the initial lofted surface of Maya has the same surface conditions before and after the adjacent side-curve extensions are added."

Examiner respectfully submits that the "lofted surface" of Maya is the second surface having an NxM surface condition, while the "side-curve extensions" are understood to be the first surface having a Px1 surface condition that is being converted to the second NxM surface. Applicant then argues, with respect to claim 24, that "...the side extension in Maya cannot itself be used to teach the "first surface" limitation at least because Maya fails to disclose converting a P x 1 surface condition of the side extension to match anything that can be considered a N x M surface condition of the claimed second surface."

Examiner respectfully submits that Maya was not depended upon to teach where the Px1 surface condition is converted to a second NxM surface condition that matches the NxM surface condition of the second surface, Konno is used to teach this particular limitation, see Figs 20-21 and column 5, lines 20-29 and 35-48. Since Applicant did not address the Konno reference, then the arguments with regards to claim 24 and the Maya reference are understood to be piecemeal.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments, with regards to claims 30-46 are moot in view of the claims not being entered.

Applicant then argues, with respect to claims 2 and 5-24, that "...the Examiner has merely pieced together disjointed portions of references, with the benefit of hindsight using Applicants' claims as a blueprint, in an attempt to reconstruct Applicants' claims..." "...Examiner has not pointed to any portions of the cited references, however, that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to incorporate the calculation of cross boundary derivatives on all the boundary curves forming a face as disclosed in Konno with the extrusion method disclosed in Maya..." and "Examiner's attempt to modify or combine Maya with Konno appears to constitute the type of impermissible hindsight reconstruction of Applicants' claims, using Applicants' claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases. Applicants respectfully submit that the rejection must therefore be withdrawn."

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Examiner respectfully submits that Applicant's reference to the Maya surface construction method as nothing more than an extrusion method is incorrect since the extrusion tool is one of many tools used in Maya to construct surfaces, see pages 20-59, wherein an extrusion tool, a lofting tool, several bi-rail tools and a surface blend tool are being described as tools to be used in constructing surfaces and thus indicating that Maya is a surface construction method.

Examiner further submits that combining primary reference Maya with secondary reference Konno in order to smoothly join two surfaces sharing a boundary curve such that by creating interior control points determined by the condition of connection on the boundary, which is derived from the condition of continuity on the boundary provides for Cn continuity on the surfaces within the boundary curves, see Konno et al.: column 3, lines 8-27, thus providing the motivation for matching the second NxM surface condition to the first NxM surface as claimed. Thus the rejection of claims 2 and 5-24 stand. It is noted that applicant did not address the rejection of claims 1 and 3-4.